BINDING AUTHORITY

Insurance Coverage Decisions: Issued Today - Impact Tomorrow

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Insured In The Hole: Prisoner Working In The Kitchen Is Not A Volunteer

24601 Unique Case

Jean Valjean, one of the world's most famous prisoners, had a 19 year struggle with the law for stealing a loaf of bread. Ezra Lambert, a West Virginia prisoner, has just endured a 4+ year legal battle over insurance coverage for injuries sustained when he dropped a mixer -- a machine used in making bread -- on someone's foot. I'm guessing that the similarities between Messrs. Valjean and Lambert end there.

Despite my best efforts (well, some effort at least) I was not able to learn what Mr. Lambert did to end up in a West Virginia jail. [By the way, something tells me that a West Virginia jail is an exception to that *Almost Heaven* thing.] I could have tracked down a picture of Mr. Lambert's mug shot at http://wvjails.info. However, there was a charge involved. And *Binding Authority* is a low budget production.

Before going on, a quick word about the selection of Mr. Lambert's case for *Binding Authority*. I take the selection of cases for *Binding Authority* very seriously. I consider it a privilege to show up, unannounced, in your in-box. And, like you, I'm not a fan of impertinent e-mails. For these reasons, I make certain that any case selected for *BA* has relevance to a large section of the readership. The *Binding Authority* two way mirror focus groups help with this. But Mr. Lambert's case is different. Except for the parties involved, it probably has relevance to nobody. That's because it involves such a unique issue. Not surprisingly, it was called a case of first impression by the court. And I can't image too many more like it coming along. But after much thought, I decided that, despite my commitment to relevance, *National Union Fire Insurance Co. v. Ezra Lambert* (4th Cir.; Jan. 20), because of its uniqueness, would make the *Binding Authority* cut. If you're not happy about that, contact the *Binding Authority* ombudsman.

Back to Mr. Lambert. In October 2006, while a prisoner in a West Virginia jail, he was working in the kitchen. He chose to work in the kitchen because he wished to "eat extra food and to get out of [his] cell."

Lambert was pushing a cart with a mixer when the wheel of the cart got stuck in a crack in the floor. He continued pushing the cart, causing the mixer to fall off the cart, crushing Betty Jean Hale's foot. Betty Jean was an employee of Aramark Correctional Services working at the jail.

Hale filed suit in West Virginia state court in 2007 [I spent $0.40 to get a copy of her complaint from PACER.] She named various people and entities as defendants, including Ezra Lambert. National Union issued a CGL policy to the State of West Virginia. National Union filed a declaratory judgment action seeking a determination that it had no duty to defend or indemnify Mr. Lambert. At issue – Was Lambert an "Insured" under the policy, on the basis that he was a "volunteer worker," pursuant to the policy's Who is an Insured section.

The federal District Court held that Lambert was a volunteer -- because he worked without compensation, chose to work in the kitchen rather than elsewhere, and considered himself a volunteer.

The 4th Circuit Court of Appeals had little trouble reversing. It described its reasoning as follows (Please forgive the lengthy quote – it's late in the day):

[A]bsence of coercion is the thread uniting the disparate definitions of "volunteer." To be considered a "volunteer worker," then, Lambert must have elected to work of his own volition. A close look at West Virginia statutes and the nature of Lambert's confinement reveals that his work in the kitchen was anything but voluntary. As an initial matter, Lambert conceded that he was obligated to work at the Jail in some capacity. The Jail's policy is wholly consistent with West Virginia law, which requires inmates to participate in jail work assignments[.] Because Lambert was compelled to work at the Jail, he cannot be considered a "volunteer worker" under the Policy.

The nature of incarceration and the jail-inmate relationship further underscores that Lambert is by no means a "volunteer worker." We have emphasized that, "[b]ecause ... inmates are involuntarily incarcerated, the [jail] wields virtually absolute control over them to a degree simply not found in the free labor situation of true employment." … Because a volunteer generally enjoys more freedom than an employee and courts uniformly hold that a jail's absolute authority over an inmate precludes a finding that an inmate is an employee, we have little trouble concluding that an inmate is not a "volunteer worker." Indeed, Lambert's thwarted protest provides a case study in the coercive authority of jails. Whereas a volunteer worker under the ordinary meaning of the term would have been free to leave his shift at his discretion without suffering a concrete penalty, Lambert was put in "the hole" for five days when he refused to finish his kitchen shift. At bottom, the Jail's "virtually absolute control" over Lambert, which renders Lambert's status as a worker something approximating involuntary servitude, yields an impossible fit between his role and the definition of "volunteer worker."

Lambert at 11-13.

And there you have it. While the decision is unlikely to cause any reserve adjustments, it's an interesting, novel and thought provoking one nonetheless. It's off the beaten path, but we all need a break now and then from analyzing whether faulty workmanship is an "occurrence."

A copy of the 4th Circuit's January 20 decision in *National Union Fire Insurance Co. v. Ezra Lambert* can be accessed here:

http://pacer.ca4.uscourts.gov/opinion.pdf/101557.U.pdf

Please let me know if you have any questions.

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